



U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

February 24, 2020

TO: Members, Committee on Energy and Commerce

FROM: Committee Republican Staff

RE: Hearing entitled, “In the Dark: Lack of Transparency in the Live Event Ticketing Industry”

The Subcommittee on Oversight and Investigations will hold a hearing on Wednesday, February 26, 2020, at 10:00 a.m. in 2123 Rayburn House Office Building, entitled “In the Dark: Lack of Transparency in the Live Event Ticketing Industry.”

I. WITNESSES

- Amy Howe, President and Chief Operating Officer, Ticketmaster;
- Bryan Perez, Chief Executive Officer, AXS;
- Stephanie Burns, Vice President and General Counsel, StubHub;
- Ryan Fitts, Vice President, Legal Affairs, Vivid Seats;
- Donald Vaccaro, Co-Founder and Chief Executive Officer, TicketNetwork; and
- Joe Choti, President and Chief Executive Officer, Tickets.com.

II. BACKGROUND

a. Event Ticket Sales

Tickets for concerts, theater, and sporting events can be purchased from the original seller (e.g. primary market) or a reseller (e.g. secondary market) and the majority of ticket sales occur online, through a website or mobile application.¹ The key participants in the marketplace for primary and secondary ticketing services includes:

- Primary market ticketing companies – companies that provide initial-sale ticketing services for events;

¹ U.S. Government Accountability Office, Event Ticket Sales: Market Characteristics and Consumer Protection Issues, GAO-18-347 (April 2018), *available at* <https://www.gao.gov/assets/700/691247.pdf>, (hereinafter, 2018 GAO report).

- Professional ticket brokers – companies or individuals who buy tickets, usually on the primary market, with the intention of reselling at a profit;
- Secondary market ticket exchanges – online resale platforms that facilitate transactions between third parties (brokers and consumers), but generally do not maintain their own ticket inventory; and
- Ticket aggregators – websites that aggregate in one place the resale listings from multiple secondary ticket exchanges.²

Other parties that play a role in event ticketing include artists, artist managers, booking agents, sports teams, producers, promoters, and operators of event venues (e.g. clubs, theaters, arenas, and stadiums). Ticket prices, resale activity, and fees vary for events – all of which can be impacted by the artist; artist management; promoters; booking agents; venues; popularity, time, and location of an event; supply and demand of tickets; whether the ticket is being purchased on the primary or secondary market; and delivery method of tickets, to name a few.

The event ticket industry is estimated to be a multi-billion-dollar industry. For example, one research firm estimated that online ticketing services—including concerts, sporting events, live theater, fairs, and festivals—represented a \$9 billion market in 2017,³ while another firm estimated that online ticketing revenue in the United States for sports and music events totaled about \$7.1 billion in 2017.⁴

While there are some estimates that thousands of businesses make up the United States market for online ticket sales, a small number of companies conduct the majority of event ticket sales.⁵ In the primary market, Ticketmaster—whose parent company is Live Nation Entertainment—is the largest ticketing company, with estimates that Ticketmaster “held more than 80 percent of market share in 2008, and it was still the market leader as of 2017. Less than a dozen other companies control most of the rest of the primary market.”⁶ In the secondary market more companies are active, but StubHub was estimated to hold “roughly 50 percent of market share in 2017. According to Moody’s Investors Service, Ticketmaster, which in addition to its primary market ticketing has a U.S. resale subsidiary, held the second-largest market share as of 2016.”⁷

² *Id.*

³ *Id.*; IBISWorld, Online Event Ticket Sales in the US.: Market Research Report, (Dec. 2017).

⁴ 2018 GAO Report, *supra* note 1; Statista, “Event Tickets,” (last accessed Jan. 17, 2018), <https://www.statista.com/outlook/264/109/event-tickets/united-states>.

⁵ 2018 GAO Report, *supra* note 1.

⁶ *Id.*

⁷ *Id.*

b. Price Transparency

i. Fees

In addition to the face value or list price of the ticket, companies that provide ticketing services on the primary market typically charge fees to the buyer. Common fees include a service fee, a per-order processing fee, a facility fee, and potentially a delivery fee depending on the delivery option that the buyer chooses. Companies vary in which fees they have and how they determine or calculate the fees. For example, some companies have fees that are set as a fixed amount that can vary with the ticket's face value, while others determine the fee total based on a percentage of the face value of the ticket.

A U.S. Government Accountability Office (GAO) report from April 2018 (hereinafter 2018 GAO report) found that “[i]n a nongeneralizable sample of events that GAO reviewed, primary and secondary market ticketing companies charged total fees averaging 27 percent and 31 percent, respectively, of the ticket's price.”⁸

In the United States, most primary ticketing services show and advertise the face value of the ticket, without taxes and fees, on their website as the cost per ticket for an event. A consumer typically does not see what the total cost of the ticket will be, including taxes and fees, until they are further along in the purchase flow. Most ticketing service websites allow the consumer to see the total cost before they are required to enter their payment information and complete their purchase.

Some ticket service companies advocate for greater transparency, such as “all-in” pricing. An “all-in” pricing structure is when the true total cost paid by consumers, including all fees, is listed for buyer to see at the outset, rather than later in the purchase flow. According to the GAO, there are both advantages and disadvantages to such practices. Requiring all-in pricing may assist consumer decision-making when comparison shopping but doing so also restricts companies' flexibility in choosing how and when to disclose fees with their customers.⁹

In 2014, StubHub opted to switch to an “all-in” pricing structure. Despite StubHub switching to an “all-in” pricing structure, other ticketing services did not make that change. As a result, StubHub's ticket prices appeared higher than competing ticketing services and consumer purchasing habits negatively impacted StubHub's sales.¹⁰ In 2015, StubHub announced that it was shifting back to the previous model of listing lower prices and adding fees before checkout.¹¹ While StubHub returned to its old model, the ticketing service company provides a toggle feature on its website, which allows consumers to add a filter to show the prices with estimated fees included, allowing consumers to see an estimate of the total price earlier in the

⁸ *Id.*

⁹ *Id.*

¹⁰ Hannah Karp, *StubHub Sings the Blues After Shifting Fees*, THE WALL STREET JOURNAL (Mar. 26, 2014), available at <https://www.wsj.com/articles/stubhub-sings-the-blues-after-shifting-fees-1395783228?tesla=y>.

¹¹ Ethan Smith, *StubHub Gets Out of 'All-In' Pricing*, THE WALL STREET JOURNAL (Aug. 31, 2015), available at <https://www.wsj.com/articles/stubhub-gets-out-of-all-in-pricing-1441065436>.

purchase flow. Other companies also include a similar toggle feature, allowing customers to show prices with estimated fees included.

ii. Dynamic Pricing

Dynamic pricing is when the price of a ticket adjusts over time based on demand. The use of dynamic pricing does not necessarily benefit the consumer. However, the use of dynamic pricing, particularly by the primary market, can reduce secondary market activity by pricing tickets closer to their market clearing price and allowing more ticket revenue to go to the artist or team, rather than secondary market ticket sellers. In addition to dynamic pricing being used for events such as concerts, especially ones that are in high demand, according to the 2018 GAO report, sports teams also use dynamic pricing for individual game tickets to adjust the price as a game approaches based on changing demand factors, such as team performance and the weather forecast.

c. Ticket Availability

The number of tickets available for an event can vary depending on the event location and type. For example, the number of tickets available for a sporting event held at a stadium or arena remains static for any given event at that venue. However, ticket availability for concerts can fluctuate depending on the venue, the anticipated demand for a concert, and the seating configuration for the event, which can be based on the set-up for the stage and/or sound system.

Venues, promoters, agents, and artists commonly hold back a small portion of tickets from public sale. These hold backs can be given or sold to friends or family of the artist; media outlets, such as radio stations; high-profile guests; or to allow for flexibility until the seating configuration for the event is final. While there is not comprehensive data on the proportion of tickets reserved for holds, the 2018 GAO report noted that industry representatives told GAO that holds typically represent a relatively small number of tickets—a few hundred for major events or perhaps a thousand for a stadium concert.”¹² Unused holds are typically released before the event, offering the tickets to the public at face value.¹³

In addition, tickets to popular events “are often first sold through presales, which allow certain customers to purchase tickets before the general on-sale. Common presales include those for holders of certain credit cards or members of the artist’s fan club, although promoters, venues, or other groups also may offer presales.”¹⁴ While there is not comprehensive data on the proportion of tickets sold through presales, the 2018 GAO report noted that industry representatives told GAO “that 10 percent to 30 percent of tickets for major concerts typically are offered through presales, although it can be as many as about 65 percent of tickets for major artists performing at large venues.”¹⁵

¹² 2018 GAO Report, *supra* note 1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

According to the GAO, it is unclear whether any requirement to disclose ticket availability benefits consumers and may introduce new compliance challenges into the market.¹⁶ Additionally, such a requirement may require businesses to disclose proprietary information.¹⁷

d. Transferability of Tickets

Event tickets can be deemed transferable or nontransferable. If a ticket is nontransferable, that means that the terms of the ticket do not allow for the transfer or resale of the ticket. Nontransferable tickets are rarely used, but they prevent the re-sale of a ticket, and therefore allow more consumers to access tickets at face value. However, nontransferable tickets limit a consumer's flexibility and ability to sell tickets they cannot use. In addition, nontransferable tickets often require the buyer's credit card or other identification be presented at the venue in order to verify that the ticket was purchased by that individual. As a result, in addition to being inconvenient to the original purchaser, nontransferable tickets can create an inconvenience at the venue for anyone to whom the original consumer tries to transfer the ticket. Additionally, nontransferable tickets can prevent efficient allocation of tickets.¹⁸ The decision as to whether to make tickets transferrable or nontransferable is typically made by the artist before the tickets go on sale. According to the 2018 GAO report, at least three states—Connecticut, New York, and Virginia—restrict nontransferable tickets.¹⁹

In addition to nontransferable tickets, some tickets are transferable, but have restrictions or fees associated with transferring the tickets. For example, some event ticketing service companies require that you create an account with them in order to access a ticket you purchased, even if you did not purchase the ticket on their website and/or you do not have an existing account with them (e.g. a customer purchases a ticket on a secondary market website, but has to create an account with the primary market website from which the ticket originated).

e. Speculative Tickets

A speculative ticket can be defined in different ways, but typically a speculative ticket refers to a ticket that is put up for sale by an individual when the individual does not yet have the ticket in hand. Reasons that person may not have the ticket in hand can be because the event has not gone on sale yet, the person does not have a contractual right to the ticket, or the ticket is listed on another website and has not yet been purchased by the individual selling the ticket.

In addition, rather than listing a ticket with a specific row and seat, some secondary market ticketing services will list and sell a ticket that is listed as being in a section or zone. This practice "guarantees" that the tickets will be within the listed section and/or zone, but not necessarily the specific section, row, or seat because at the time the ticket is listed, the seller is unable to determine the specific section, row, or seat until the seller receives the tickets.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

f. Deceptive White-Label Websites

A white-label, or private label, website is “a sales website built by one company that allows affiliates to use the software to build their own, uniquely branded websites.”²⁰ A ticket exchange that offers white-label support provides an affiliate company with access to its ticket inventory and services, such as order processing and customer service, but the affiliate uses its own uniform resource locator (URL), sets the ticket prices and fees, and conducts its own marketing and advertising.²¹ Many websites that provide white-label services are not deceptive, and have agreements with a venue, artist, or sporting team to provide these services.

Deceptive white-label resale websites, to the contrary, often appear as paid results of internet searches for venues and events and contain a URL and/or languages and images on the website that are designed in a way that might mislead consumers to think that they are purchasing tickets directly from the venue or artist. While deceptive white-label sites can contain disclosures on their landing and check-out pages noting that the website is not associated with the venue or artist, this information is not always easily identifiable because of the font size and/or the location of the disclosure. In addition to the deceptive nature of some of these white-label sites, some of these sites charge higher fees than other ticketing service websites. For example, the 2018 GAO report found that these white-label sites “often charged higher fees than other ticket websites—sometimes in excess of 40 percent of the ticket price.”²²

g. Oversight and Regulation of the Industry

Under Section 5 of the Federal Trade Commission (FTC) Act, the Commission can bring actions against companies engaged in unfair or deceptive acts or practices. An act is “deceptive” if it is material and is likely to mislead consumers acting reasonably under the circumstances.²³ Secondary ticket sellers that intentionally deceive consumers into reasonably believing they are purchasing their tickets from a primary seller are likely engaging in a deceptive act. Additionally, State Attorneys General have the authority to go after such bad actors under their state consumer protection laws.

One federal statute that does address ticketing issues is the Better Online Ticket Sales Act of 2016 (or the BOTS Act of 2016), which became public law in December 2016.²⁴ The BOTS Act of 2016 “prohibits the circumvention of a security measure, access control system, or other technological control measure used online by a ticket issuer. The Act also prohibits selling or offering to sell an event ticket obtained through such a circumvention violation if the seller participated in, had the ability to control, or should have known about the violation. The Act

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Federal Trade Commission, A Brief Overview of the Federal Trade Commission's Investigative, Law Enforcement, and Rulemaking Authority (revised Oct. 2019), *available at* <https://www.ftc.gov/about-ftc/what-we-do/enforcement-authority>.

²⁴ Pub. L. No. 114-274, Better Online Ticket Sales Act of 2016 (Dec. 14, 2016), *available at* <https://www.congress.gov/114/plaws/publ274/PLAW-114publ274.pdf>.

applies to event tickets for public concerts, theater performances, sporting events, and similar activities at venues with seating capacity of over 200.”²⁵ At this time, neither the FTC nor the states have taken enforcement action under this statute.

In addition, the Department of Justice’s (DOJ) Antitrust Division plays a role in monitoring competition in the event ticketing industry. For example, in 2010, Live Nation and Ticketmaster merged to form Live Nation Entertainment, Inc. DOJ approved the merger after requiring Ticketmaster to license its primary ticketing software to a competitor, sell off one ticketing unit, and agree to be barred from certain forms of retaliation against venue owners who use a competing ticket service.²⁶

While event ticketing specifically is not federally regulated, some states and two foreign jurisdictions—the United Kingdom (UK) and some provinces in Canada—have ticketing laws in place to address unfair and deceptive acts and practices. For example, some states restrict the use of bots, some impose price caps on ticket resale prices, and some restrict the use of nontransferable tickets.²⁷ In addition, several states require brokers to be licensed and adhere to certain professional standards, such as maintaining a physical place of business and a toll-free telephone number and offering a standard refund policy.²⁸ Further, some states, the UK, and certain provinces in Canada have ticketing laws that address fee related disclosures to the purchaser.²⁹

On November 21, 2019, the Committee sent a bipartisan letter to six ticketing service companies in the live event ticketing industry—Live Nation Entertainment, Anschutz Entertainment Group (AEG), StubHub, Vivid Seats, TicketNetwork, and Tickets.com—requesting documents, information, and a briefing from each of the companies regarding their ticketing policies and practices.³⁰ Individuals from all six companies have been invited to testify at the Subcommittee’s February 26, 2020 hearing.

²⁵ Federal Trade Commission, Better Online Ticket Sales Act (last visited on Feb. 18, 2020), *available at* <https://www.ftc.gov/enforcement/statutes/better-online-ticket-sales-act>.

²⁶ *United States of America v. Ticketmaster Entertainment, Inc.*, No. 1:10-cv-00139 (D.D.C. July 30, 2010).

²⁷ 2018 GAO Report, *supra* note 1.

²⁸ *Id.*

²⁹ *Id.*

³⁰ H. Comm. on Energy and Commerce, Energy and Commerce Committee Launches Investigation into Potential Unfair and Deceptive Practices in the Live Event Ticketing Industry (Nov. 21, 2019), *available at* <https://republicans-energycommerce.house.gov/news/press-release/energy-and-commerce-committee-launches-investigation-into-potential-unfair-and-deceptive-practices-in-the-live-event-ticketing-industry/>.